

TOWN OF TUPPER LAKE SPECIAL BOARD MEETING

OCTOBER 18, 2013

Roll Call: Supervisor Roger Amell
Councilwoman Kathleen Lefebvre
Councilman John Quinn
Councilwoman Patricia Littlefield
Councilman Gerald Fletcher

Recording Secretary: Laurie J Fuller – Town Clerk

Press: Dan McClelland – Tupper Lake Free Press

Also: Kirk Gagnier – Town Attorney

Guest: Dennis Ryan Pete Edwards
Ricky Dattola Jim Dattola
Don Dew Jr.
Tom Lawson
Randy Bedore

Supervisor Amell called Special Town Board Meeting to order at 1:02 p.m. opening with the Pledge of Allegiance.

Dan McClelland, a River Road resident has done some research on the purchasing of Setting Pole Dam and wish to read a statement to town board members on his concerns. Dan spoke with other towns that have a similar situation. One of the primary concerns Dan has the need for a clear covenant in any sale document, giving the town ultimate authority to step in and open the dam gates, whenever town officials saw fit, in order to avert flooding.

Dennis Ryan, vice president of ECOsponsible Inc. stated the new automated flood control mechanism his company will install on the dam has an override mechanism that can be employed in the face of the flooding conditions, by the use of a password to the computer system that operates it.

Councilman Quinn would like to see an appraisal done first before selling also asked if possibly putting up to a public referendum, rather than wait for someone to petition the town to do it.

Councilwoman Littlefield feels this all happen to quickly and would like to see more than one bidder.

Councilman Fletcher stated if the town decides to retain ownership of the dam a large repair expenses are in store for the town.

Councilwoman Lefebvre stated she thought the ECOsponsible offer was a very good one and would also be good for the community.

Supervisor Amell stated he is looking out for the best interest of the tax payers, having the dam appraised would cost between \$8,000 to \$10,000. Selling the dam for the \$400,000 offer would also put the property back on the tax roll.

Ricky Dattola feels the board should make a decision and vote, that is what they were elected to do, and if someone wants to bring it to a referendum they should.

Randy Bedore suggested the board delay a decision, given the fact that Friday's meeting has been rescheduled only the day before. He does not believe the meeting was posted within the 72 hour period the town law requires.

Larry Reandeau asked if they were going to put the question to a public referendum, Supervisor Amell answered no. Larry stated he would secure the necessary signatures to force a public vote.

Supervisor Amell asked for motion on accepting bid from ECOsponsible for purchase of Setting Pole Dam property.

Bid reads as:

Thursday, October 10, 2013

Town of Tupper Lake

120 Demars Boulevard

Tupper Lake, NY 12986

RE: BID FOR THE SALE OF SETTING POLE DAME REAL ESTATE

Dear Sir/Madam,

Having examined the "Invitation to Bid" (Attachment #1) dated September 25, 2013 for the "Sale of Setting Pole Dam Real Estate" we, the undersigned, offer to purchase the Setting Pole Dam Real Estate consisting of approximately 7.05 acres, tax map parcel

#489.-1-3 and all improvements located thereon, for the lump sum of: \$400,000.

In addition the prospective buyer would like to offer the following option as part of the bid:

OPTION: Upon acceptance of our bid, installation, and completion of the proposed dam upgrades, the new owner would like to exercise an option as a showing of good will and community support as follows; the new owner will offer to pay the Town of Tupper Lake an annual donation or stipend to be used to support the Town of Tupper Lake's amateur youth sports and summer day camp programs. For each year of the hydropower license term or any extension thereof issued to the buyer by FERC (Federal Energy Regulatory Commission) the buyer will pay the amount of \$12,000.00 (twelve thousand) dollars per year to the town. The initial payment shall be made in full within 90 days from the date of commissioning of the Hydro Power Project at the Setting Pole Dam. The remaining

payments will be made on or before the annual anniversary date. The expected initial term of the buyers' license application will be (50) fifty years in duration. The value of this option is estimated at \$600,000.00.

The total cash payments made to the Town of Tupper Lake related to this bid equals \$1,000,000.00.

I would be most appreciative if you could let us know if our bid is acceptable within ten days. If in the meantime you have any questions; my number is 716-655-3524. Please feel free to give me a call.

Thank you again for your time and consideration.

Best Regards,

Dennis Ryan
Vice President,
ECOsponsible Inc.
120 Mitchell Road

East Aurora, NY 14052-9710

*This Bid is subject to 45 day Attorney Review Period.
and subject to municipal & Government approval for the Property
Transfer.*



TOWN OF TUPPER LAKE, NEW YORK

RESOLUTION 32 / 2013

OCTOBER 18, 2013

The Town Board hereby resolves to accept the bid of Ecosponsible, Inc. for the purchase of Setting Pole Dam as follows:

The Town of Tupper Lake has agreed to sell the following parcel of land and improvements described as follows:

Sale of real property and improvements known as the Setting Pole Dam property consisting of approximately 7.05 acres, tax map parcel #489.-1-3 and all improvements located thereon. The property and improvements are being conveyed "AS IS" without warranty or disclosure of any kind related to the property. The property is further subject to all covenants, easements, conditions, court orders and restrictions of record and the Deed to the property shall contain affirmative covenants requiring the new owner to maintain the water levels at the Dam in the same manner as set forth in all prior court orders related to the dam.

Any purchaser shall also agree to indemnify, defend and hold harmless the Town of Tupper Lake against any suit, claim or action, with such provisions to be included in the Deed and pursuant to a separate indemnity agreement. The Deed shall also contain a reversionary clause which shall allow the Town to elect to take back the property in the event that any provisions set forth in the Deed or indemnity agreement are violated. The Deed shall also confirm a reservation for a public canoe/portage access to be exercised by the Town in its discretion, if at all, within five (5) years of the Deed conveyance.

The parcel will be sold “AS IS”. The Town will provide no disclosure or warranty on the condition of the parcel of land or improvements and the Purchasers will be required to release the Town from any and all responsibility and liability with respect to the condition of the parcel and improvements.

The purchase price is the sum of \$400,000.00 payable at closing plus an annual fee upon commencement of any electric producing project as set forth below. The closing is subject to municipal and governmental agency approval of the property transfer and Purchaser’s attorney’s review for a period of forty five (45) days from the date of the acceptance of the bid.

The purchase price is also supplemented by an additional annual fee of \$12,000.00 per year to be paid in one lump sum each year to the Town of Tupper Lake. The first such payment shall be made within ninety (90) days of the commissioning of a Hydro Power Project at the Setting Pole Dam, or the project producing electricity, whichever is first. These annual payments shall be paid on the anniversary date of the first payment each year that the project is operational and/or subject to any of the following:

A FERC (Federal Energy Regulatory Commission) license or exemption for an electricity project, or the license or authority of any other governmental agency with similar oversight, or the exemption of any such agency, and any extensions of all of the foregoing, and/or the operation of a project that produces electricity on the property. The annual payments shall be applied by the Town to support the Town of Tupper Lake Youth Recreation Sports and Summer Day Camp Programs, including administration thereof.

Date: October 18, 2013	Supervisor Amell	AYE
	Councilwoman Lefebvre	AYE
Motion: Councilman Fletcher	Councilman Quinn	NAY
	Councilwoman Littlefield	NAY
Seconded: Councilwoman Lefebvre	Councilman Fletcher	AYE

Action: Carried 3/2 vote

seal

Laurie J Fuller – Town Clerk RMC

TOWN OF TUPPER LAKE, NEW YORK
NOTICE OF PERMISSIVE REFERENDUM

To be published in the Free Press on October 23, 2013 and posted on the Town bulletin board for the period of October 23, 2013 to November 22, 2013.

NOTICE IS HEREBY GIVEN that the Town Board of the Town of Tupper Lake, Franklin County, New York at a special meeting held on October 18, 2013 duly adopted a resolution subject to a permissive referendum, an abstract of which is as follows:

The Town of Tupper Lake has agreed to sell the following parcel of land and improvements described as follows:

Sale of real property and improvements known as the Setting Pole Dam property consisting of approximately 7.05 acres, tax map parcel #489.-1-3 and all improvements located thereon. The property and improvements are being conveyed "AS IS" without warranty or disclosure of any kind related to the property. The property is further subject to all covenants, easements, conditions, court orders and restrictions of record and the Deed to the property shall contain affirmative covenants requiring the new owner to maintain the water levels at the Dam in the same manner as set forth in all prior court orders related to the dam. Any purchaser shall also agree to indemnify, defend and hold harmless the Town of Tupper Lake against any suit, claim or action, with such provisions to be included in the Deed and pursuant to a separate indemnity agreement. The Deed shall also contain a reversionary clause which shall allow the Town to elect to take back the property in the event that any provisions set forth in the Deed or indemnity agreement are violated. The Deed shall also confirm a reservation for a public canoe/portage access to be exercised by the Town in its discretion, if at all, within five (5) years of the Deed conveyance.

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The purchase price is also supplemented by an additional annual fee of \$12,000.00 per year to be paid in one lump sum each year to the Town of Tupper Lake. The first such payment shall be made within ninety (90) days of the commissioning of a Hydro Power Project at the Setting Pole Dam, or the project producing electricity, whichever is first. These annual payments shall be paid on the anniversary date of the first payment each year that the project is operational and/or subject to any of the following:

A FERC (Federal Energy Regulatory Commission) license or exemption for an electricity project, or the license or authority of any other governmental agency with similar oversight, or the exemption of any such agency, and any extensions of all of the foregoing, and/or the operation of a project that produces electricity on the property. The annual payments shall be applied by the Town to support the Town of Tupper Lake Youth Recreation Sports and Summer Day Camp Programs, including administration thereof.

Dated: October 18, 2013

Laurie Fuller, Town Clerk

Bids for groomer:

After discussing bids board members agreed to **TABLE** until the final budget is adopted.

The next meeting will be the regular board meeting and budget hearing set, for Monday, November 4, 2013 at 4:00 p.m..

Motion to adjourn at 2:30 p.m. was made by Councilwoman Lefebvre

Seconded by Councilwoman Littlefield

All Town Board Members voted AYE 5/0 Amell, Lefebvre, Quinn, Littlefield & Fletcher

Laurie J. Fuller – Town Clerk RMC